CF0000057887

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Criminal Appeal No. 595 of 1994.

5665

APPELLANTS : 1. Dharam S/o Sudar Bhatra aged about 40 years R/o Vill.Besrapal,

2. Manbodh S/o Sudar Bhatra aged 35 years R/o Talur,

3. Sada S/o Sudar Bhatra, aged 30 years T/o Talur.

4. Shibo S/o Sudar Bhatra aged 25 years R/o Talur.

All of P.S.Jagdalpur, Distt.Bastar.

Filed on 23.4.94.
by Sri Sanjay Shasma
Advocate
for R. to D.R.
Dt. 23-4-94

- Versus -

NON-APPLICANT : State of Madhya Pradesh

Criminal Appeal U/s 374(2) of the Cr.P.C.

Cr.A. 594/94

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:-

Hon'ble Shri L.C. Bhadoo and
Hon'ble Shri Dhirendra Mishra, JJ.

19-1-2006

Shri Abhay Tiwari, counsel for the appellants.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Alok Bakshi, Govt. Advocate for the State/ respondent.

Oral judgment dictated on *Dais.*

PER L.C. BHADOO, J:-

By filing Cr.A. No.594/94 and Cr.A. No.595/94 accused/ appellants namely Dharam, Manbodh, Sada and Sheebo have questioned the legality of the judgment of conviction and order of sentence dated 3rd March 1994 passed by the 1st Additional Sessions Judge, Jagdalpur in S.T. Nos. 131/87 and 130/87 whereby learned 1st Additional Sessions Judge after holding each of the accused/appellants guilty for commission of murders of Sukman (Sukhnath) and Ramnath, sentenced them to undergo imprisonment for life.

As both the appeals are arising out of the same judgment, therefore, they are being disposed of by this common judgment.

The prosecution case, in brief, necessary for the disposal of these appeals is that PW-2 Sukhanand lodged the reports Ex.-P/6 and Ex.-P/6-A in the police station Bastar on 27-1-87 at 1.50 p.m. to the effect that today at about 10.30 a.m. he was sitting at his residence, at that time, accused Dharam, Sada and Sheebo came carrying blood stained axe in their

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hands. Manbodh came with bow and arrow in his hand. Sada and Sheebo said that on account of dispute in connection with plucking of fruits of Tamarind tree quarrel took place in which they attacked Ramnath with the axe till his death. Accused Dharam attacked Sukman (Sukhnath) with the axe and murdered him. Manbodh said that he has snatched bow and arrow from Sulo Bai. All the four persons said that they are going to the police chowky, Bastar. He informed Jabar Singh Patel and Lekhan Pujari and went along with them to the place of occurrence where Tamarind tree was standing, where he saw Sukman and Ramnath were lying dead. There were injuries on their neck and head. Blood was oozing out of the injuries. The crime was witnessed by Sulo Bai Son Bai and Chhedi. Receiving this information, crime was registered by A.S.I. Jagdish Narayan (PW-8). After registering the case, based on the memorandum (Ex.-P/1) axe in question was taken into possession under Ex.-P/2 from accused Sada, another axe was taken into possession from the possession of accused Sheebo under Ex.-P/3, under Ex.-P/4 some clothe of accused Sada was taken into possession, the weapon of offence i.e. axe was taken into possession from accused Dharam under Ex.-P/34, and bow and arrow were taken into possession from accused Manbodh under Ex.-P/5. Panchanama Ex.-P/27 of the body of Ramnath was prepared and Panchanama Ex.-P/32 of the body of Sukman was prepared. The dead bodies of Sukman and Ramnath were sent for postmortem examination to the Maharani Hospital, Jagdalpur where Dr. V.K. Lagu (PW-3) conducted postmortem on the body of Ramnath and prepared postmortem report Ex.-P/8. He also conducted

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postmortem on the body of Sukman and prepared postmortem report Ex.-P/13. The site plan Ex.-P/37 was prepared by K.P. Agrawal, Patwari. The articles were sent to the F.S.L., Sagar from where reports Ex.-P/38 and Ex.-P/39 were received.

After completion of the investigation, two charge sheets were filed against the accused/appellants along with Sukmati, Sumati and Tularam for each murder in the Court of Judicial Magistrate, Jagdalpur who in turn committed the cases to the Sessions Judge, Jagdalpur from where learned 1st Additional Sessions Judge received both the cases on transfer for trial. As both the murders were committed at one time, therefore, learned Additional Sessions Judge ordered for joint trial of both the cases.

The prosecution in order to establish the charge against the accused persons examined 8 witnesses. The statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution evidence appearing against them and stated that they have been implicated in the crime on account of land dispute and animosity. Accused Dharam stated that he was on the tree. There was some quarrel between Ramnath, Sukman and the labourers. He went to the police station and lodged the report. Accused Manbodh stated that the land is of his father and they are in possession of the land. In the year 1984 the Court decided in their favour. In that land, there is Tamarind tree. He along with other persons and 20 labourers were plucking the fruits of Tamarind tree. Ramnath and Sukman (Sukhnath) came with axe, club and attacked him. Similar is the defence of other accused persons.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The accused persons also produced one defence witness namely Raisai (DW-1). Learned Additional Sessions Judge after hearing arguments of Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused/appellants as mentioned in para-1 of this judgment, however, acquitted other accused namely Sukmati, Sumati and Tularam.

We have heard Shri Abhay Tiwari, learned counsel for the accused/appellants and Shri U.N.S. Deo, Additional Public Prosecutor with Shri Alok Bakshi, Govt. Advocate for the State/respondent.

The homicidal deaths of Sukman and Ramnath are not in dispute.

As far as question of committing offence under Section 302 of the I.P.C. by the accused/appellants is concerned, Shri Abhay Tiwari, learned counsel for the accused/appellants argued that the land in question upon which Tamarind tree was standing was in possession of the accused persons as the accused persons won the case and thereafter they were in possession. On the fateful day when the accused/appellants along with 20 labourers were plucking the fruits of Tamarind tree, deceased Sukman and Ramnath came with axe and club and attacked Manbodh, therefore, while exercising the right of private defence, the accused persons attacked the deceased persons, as such their conviction under Section 302 of the I.P.C. is bad in law.

On the other hand, Shri U.N.S. Deo, Additional Public Prosecutor with Shri Alok Bakshi, Govt. Advocate supported the judgment of the trial Court.

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Therefore, limited question remains to be decided by this Court in these appeals is that as to whether, on the facts and in the circumstances of the case, the accused persons are entitled to the benefit of exercising the right of private defence to person and property. In order to appreciate argument advanced by learned counsel for the accused/appellants we have perused the prosecution evidence and record as also the judgment of the trial Court. PW-5 Chendiram was eyewitness to the incident. He has stated that he took Tamarind tree in question on lease at the cost of Rs.450/-. On the fateful day accused Sada, Dharam and Sheebo were on the tree. Accused Manbodh was standing under the tree. Accused Sukhmati and Sumati were collecting the fruits of Tamarind tree on which Ramnath asked them not to pluck the fruits, on which accused Dharam and Manbodh asked Ramnath 'who are you to stop them'. Dharam attacked Sukhnath with the axe on his neck. Thereafter Manbodh attacked Sukman (Sukhnath) with the axe. Manbodh assaulted Sukhnath on his back with the axe and thereafter Dharam again assaulted Sukman (Sukhnath) with the axe. Seeing father being attacked Ramnath who was grazing cows came running on which Manbodh attacked Ramnath 3 times with the axe on his leg, as a result of which Ramnath fell down. Thereafter, Dharam assaulted Ramnath with the axe on his back. Accused Sada and Sheebo also attacked Ramnath with the axe on the back and chest. The accused persons were saying 'today they felled down giant (demon)' and they drank the blood of Ramnath with the help of leaves. Sukman and Ramnath died on the spot. The wife of Dharam said that 'kill these persons

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

whether you are having mustache or not'. Sumati said that it is good because they were contesting the case with her father and thereafter accused Sada, Sheebo, Dharam and Manbodh went towards the hill carrying axe in their hands.

PW-6 Ku. Sulo @ Sulochana, daughter of Ramnath had also witnessed the crime as per her evidence. She has stated that on the fateful day i.e. 27-1-87 at about 9 a.m. the accused persons were quarrelling with her father near Tamarind tree which was standing at the distance of 20-25 steps from their residence. Her father Ramnath and grandfather Sukhman (Sukhnath) were standing below the Tamarind tree. Accused Manbodh, Dharam, Sada and Sheebo were carrying axe. Dharam attacked with the axe to her grandfather, thereafter Manbodh also attacked her grandfather with the axe. The accused persons also ran after her father. Manbodh attacked with the axe on the leg of her father. When the father fell down on the earth, accused Sada attacked with the axe on the leg, hand and back of her father and her grandfather was attacked on the head and neck. Dharam attacked her grandfather on the neck, blood was oozing out of the injury, as a result of which her grandfather and father died.

PW-2 Sukhanand (Kotwar) has stated that on the fateful day he was sitting in his house. The accused persons came to him. Accused Dharam, Sada and Sheebo said that they have murdered Sukman and Ramnath with the axe. Manbodh stated that he has snatched the arrow from Sulochana and they also said that Ramnath has died.

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From the evidence available on record, it has come on record that some dispute regarding land in question where Tamarind tree was standing was going on between the complainant party and the accused party, but as far as the question of exercising the right of private defence to the person and property is concerned, Exception 2 of Section 300 of the I.P.C. envisages that "Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.' First of all question comes as to whether the accused persons have been able to show that the land in question upon which Tamarind tree was existing was in their settled possession. There is nothing on record which shows that the land and tree in question where quarrel took place and the accused persons went to pluck fruits of the Tamarind tree were in settled possession of the accused persons. PW-5 Chendiram has categorically stated that the tree in question was given to him on lease at the cost of Rs.450/-. Neither any revenue record has been produced by the accused persons to show that the land and tree were in their possession nor Halka Patwari has been examined to show that the land was in their possession. PW-6 Ku. Sulo @ Sulochana on cross-examination by the counsel for accused persons has clearly stated that the case is going on between them and the accused persons but they are in possession of the land and tree. It is incorrect to say that the

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accused persons are cultivating the land. Sunder won the case but they have filed an appeal and the appeal is pending whereas, they are in possession and the accused persons are disturbing their possession. Even the investigating officer PW-8 Jagdish Narayan has not been cross-examined on this aspect to show that the accused persons are in possession of land and tree.

The accused persons have examined Ran Sai (DW-1) who has stated that 7 years before he went to village Besarapal to meet his maternal uncle Ramnath. Ramnath told him that he has to go to the land of Sunder for plucking fruits of Tamarind tree, at that time, 7 persons were sitting there. But this is the oral evidence, as has been mentioned above that no record has been produced by the accused persons to show that they were in settled possession whereas, the prosecution evidence is that the complainants were in possession. The investigating officer has also not been cross-examined on this aspect by the defence counsel to establish that the accused persons were in possession, therefore, the evidence of this witness is of no avail to the accused persons. Therefore, what this witness has stated appears to be after thought.

Apart from that, there is nothing on record to show that the accused persons received any injury in the incident in question. There is nothing on record also to show that deceased Ramnath and Sukman were having any weapon with them and they caused any injury to the accused

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persons. The prosecution evidence is that when the accused persons were plucking fruits from tree, Sukman asked them as to why they are plucking fruits on which the accused started attacking him. In this regard, PW-5 Chendiram in para-9 of the cross-examination has clearly stated that it is incorrect to say that Ramnath, Sukman and he were having axe. It is incorrect to say that Ramnath assaulted Manbodh with the axe. It is also incorrect to say that Ramnath assaulted Manbodh with club. On the other hand, the accused persons were having deadly weapon i.e. axes with them, with the help of axes they attacked Ramnath and Sukman and they inflicted injuries mercilessly on the vital part of the body as a result of which Ramnath and Sukman died spontaneously. The accused persons were so furious even they drunk the blood of the deceased persons with the help of leaves of the tree. Thereafter, they themselves went to Kotwar Sukhanand and made extra judicial confession that they have killed Ramnath and Sukman by attacking with the axe. The extra judicial confession made by these accused persons before Kotwar was voluntary, prompt and true.

In view of the evidence of prosecution, axes, weapons of offence, were recovered immediately at the police station itself when the accused persons produced weapons of offence. As per the evidence of Dr. V.K. Lagu (PW-3) Ramnath received as many as 13 injuries. His right lung was found cut and deceased Sukman received five injuries which were on the neck and head.

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In order to avail the benefit of Exception 2 of Section 300 of the I.P.C. the right of private defence is to be exercised in good faith and such right must be exercised without premeditation, and without any intention of causing more harm than is necessary for the purpose of self-defence. This exception would not come to the aid of the accused where they themselves were aggressor. As we have discussed in the earlier part of this judgment that in the first instance the accused persons are not in the settled possession of the land and tree as has been said by Sulochana in the cross-examination that it is true that the case regarding land in question was won by Sunder i.e. the opposite party, but the appeal is still pending against that case. PW-5 Chendiram has stated that the tree in question was given to him on lease for one year at the cost of Rs.450/- by the complainant party. Moreover, the report Ex.-P/21 was lodged by the accused persons in the police chowky Bastar at 12.45 p.m.. It is true that this report cannot be used as a piece of evidence against the accused persons, but counsel for accused persons himself referred it for the purpose of raising right of private defence, therefore, it can be looked into in order to ascertain as to whether right of private defence was available to the accused persons. It has been mentioned in the report that the case between the complainant party and the accused party is going on regarding land and tree. It has further been mentioned that when they were plucking the fruits of Tamarind tree, the deceased persons came carrying axe in their hands and Sulochana came with bow and arrow and they asked them not to pluck the fruits form the tree and started abusing. Ramnath

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assaulted Manbodh with the club and thereafter they come down from the tree. It has been admitted that they assaulted Ramnath and Sukman with the axe. But as has been mentioned above regarding assaulting Manbodh by Ramnath with the club, no injury report has been filed whereas, the accused persons themselves have admitted in this report that they attacked Ramnath and Sukman with the axe. The accused persons caused numerous injuries on the bodies of the deceased persons. Nothing has been brought on record to show that the complainant were carrying any weapon or they assaulted with that weapon to the accused party. Therefore, the manner in which the accused persons murdered Ramnath and Sukman by attacking with the axes, no case for exercising the right of private defence was made out, therefore, their case is not covered under Exception 2 of Section 300 of the I.P.C.. In view of the above facts & circumstances and evidence available on record which are referred earlier in this judgment, it cannot be held that the accused persons exercised the right of private defence in good faith because the accused persons were aggressor. From the manner in which they inflicted injuries with deadly weapons on the vital parts of the bodies of Sukman and Ramnath who were armless, it is established that the accused persons attacked the deceased with the intention to cause their death. Therefore, argument of learned counsel for the accused/appellants regarding exercising the right of private defence to person and property is devoid of any merit. There is nothing in the evidence that, in any way, the accused persons are in settled possession of the property and the deceased persons assaulted the

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Barve	accused persons, while exercising the right of private defence, they attacked the deceased persons. In the result, the appeals being devoid of any merit, are liable to be dismissed and they are hereby dismissed. Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge

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